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In re Patent of Nelson :
Patent No. 7,013,279 :
Issue Date: March 14, 2006 : Decision on Request for Reconsideration
Application No. 09/658,243 : of Patent Term Adjustment
Filing Date: September 8, 2000 :
Attorney Docket No. FXPL-01025US0 :
:

This is a decision in response to the "Application for Patent Term Adjustment Under 37 C.F.R. 1.705(d)," filed May 18, 2006, which in essence requests that the Patent Term Adjustment for the above-identified patent be increased to 997 days.

The request for reconsideration of the patent term adjustment indicated on the patent is
DISMISSED.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed with the Notice of Allowance on September 12, 2005, stated the patent term adjustment to date was 1,028 days.

The patent issued on March 14, 2006. The printed patent shows a patent term adjustment of 928 days.

The initial determination of PTA of 1,028 was reduced by 100 days for applicant delay as a result of applicant filing both an amendment and drawings on December 5, 2005, after allowance.

Applicant contends the December 5, 2005 amendment should have only resulted in a 31 deduction because the Office mailed a response on January 4, 2006.

Per 37 CFR 1.704(c)(10), a reduction in patent term adjustment is proper when an amendment under 37 CFR 1.312 or "another paper" is submitted after a notice of allowance has been mailed. The amount of the reduction is the lesser of:

- (1) the time from the day of (NOT AFTER) receipt of the amendment or paper until the mailing of an Office action or notice in response to the amendment or paper, or
- (2) four months (120 days).

The time period from the day the amendment was filed, December 5, 2005, until the mailing of an Office action on January 4, 2006, is 31 days. Therefore, applicant is correct that the *amendment* should have resulted in a reduction of 31 days.

Although the filing of the amendment only warrants a reduction of 31 days, the Office was correct in reducing the initial determination of PTA of 1,028 by 100 days for applicant delay.

Formal drawings were filed December 5, 2005. The patent issued on March 14, 2006. Therefore, the proper reduction for the drawings would have been 100 days *if* the amendment had not been filed.

37 CFR 1.703(f) states, "To the extent that periods of delay attributable to the grounds specified in §1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed." In essence, 37 CFR 1.703(f) ensures an applicant will not be penalized twice for the same time period of delay.

The patent term adjustment cannot be reduced by 31 days for the amendment and then reduced by another 100 days for the drawings, since 31 days of the delay overlap. Therefore, a reduction of 69 days is proper for the drawings. The total reduction of 100 days for the amendment and drawings was proper and correct.

The record has been reconsidered, and it has been determined that the period of adjustment on the patent was correctly shown as 928 days.

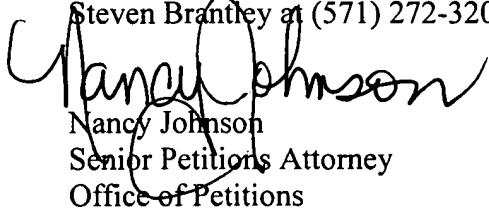
Any response to this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted. Any response should include a cover letter entitled "Renewed Request under 37 CFR 1.705(d)."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
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By facsimile: (571) 273-8300
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Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.


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